United Nations CRPD/C/17/2

Convention on the Rights of Persons with Disabilities

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Committee on the Rights of Persons with Disabilities

Report of the Committee on the Rights of Persons with Disabilities on its seventeenth session (20 March-12 April 2017)

I. States parties to the Convention and the Optional Protocol thereto

1. As at 12 April 2017, the date on which the seventeenth session closed, there were 173 States parties to the Convention on the Rights of Persons with Disabilities and 92 States parties to the Optional Protocol thereto. The lists of States parties to these instruments are available on the website of the Office of Legal Affairs of the Secretariat.

II. Opening of the seventeenth session of the Committee

2. The seventeenth session opened in a public meeting with welcoming remarks by the acting Chair of the Committee. The opening statement of the Office of the United Nations High Commissioner for Human Rights (OHCHR) was delivered by the Deputy High Commissioner for Human Rights and is available on the Committee's website. The acting Chair also delivered a statement.

3. The Committee reviewed and adopted the provisional agenda and tentative programme of work for the seventeenth session (CRPD/C/17/1).

III. Membership of the Committee

4. The list of members of the Committee as at 12 April 2017, indicating the duration of their terms of office, is available on the Committee's website.

IV. Election of the Bureau

5. The election of the Bureau was led by the Chief of the OHCHR Groups in Focus Section. The following members were elected for a term of two years, in accordance with rules 15-17 of the rules of procedure of the Committee:

Chair:	Theresia Degener
Vice-Chairs:	Danlami Basharu Coomaravel Pyaneandee Damjan Tatic
Rapporteur:	Hyung-Shik Kim

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V. Working methods

6. The Committee discussed various issues related to its working methods and adopted the decisions contained in annex I to the present report.

VI. Activities related to general comments

7. The Committee considered the report of its working group on the right to live independently and be included in the community on progress made in drafting a general comment on article 19 of the Convention. The Committee decided to endorse a draft general comment on article 19 of the Convention and to make a call for submissions.

VII. Activities related to the Optional Protocol

8. On 24 March, the Committee considered communications No. 14/2013 (*D.R. v. Australia*) No. 27/2015, (*L.M.I. v. United Kingdom of Great Britain and Northern Ireland*) and No. 31/2015 (*D.L. v. Sweden*), and declared them inadmissible (see annex II). The Committee decided to discontinue communication No. 33/2015 (*M.J.R.A. v. Spain*) because, by a decision taken in January 2017, the State party had provided the author with a leasing contract that regularized his housing situation, in compliance with the request made by the author in his initial complaint. Since the author and the State party had therefore reached an agreement as to the question raised in the complaint, the author was no longer at risk of eviction.

9. On 11 April, the Committee adopted the note by the Rapporteur on new communications and the report of the Special Rapporteur on follow-up to Views. The Committee decided to maintain its procedure of follow-up to Views with regard to communications No. 1/2010 (*Nyusti and Takács v. Hungary*), No. 4/2011 (*Budjosó et al. v. Hungary*) and No. 21/2014 (*F. v. Austria*) and to send new letters to the States parties concerned to request additional information on the measures taken to implement the Committee's recommendations.

10. The Committee considered matters related to inquiry proceedings pursuant to articles 6 and 7 of the Optional Protocol.

VIII. Other decisions

11. The Committee adopted the present report on its seventeenth session.

12. The Committee adopted its fourth biennial report to the General Assembly and to the Economic and Social Council (A/72/55).

13. The full list of the decisions adopted by the Committee is available in annex I to the present report.

IX. Future sessions

14. The eighteenth session of the Committee is scheduled to be held from 14 to 31 August 2017 and will be followed by the eighth meeting of the pre-sessional working group, from 4 to 8 September 2017.

X. Accessibility of the Committee's meetings

15. Captioning was provided by the United Nations in all public and private meetings and was facilitated, in some side events and lunch briefings, by organizations of persons with disabilities. International Sign interpretation was provided during public meetings. National sign language interpretation was provided during the dialogues with four States

parties to the Convention. Russian sign language interpretation was provided in all public and private meetings. Webcasting was provided during public meetings.

16. Pursuant to paragraph 29 of General Assembly resolution 68/268, in which the Assembly requested the Secretary-General to provide reasonable accommodation for treaty body experts with disabilities to ensure their full and effective participation, the Committee identified the provision of the following services and devices as essential to the participation by the current members of the Committee in the Committee's sessions on an equal basis with non-disabled members of the treaty bodies: easy-read and plain English text of draft and adopted documents of the Committee, including an easy-read and plain English text of the Committee's rules of procedure, its working methods, its general comments and relevant guidelines; a Perkins braille machine, electronic braille note takers/braille displays, a small braille printer and a portable loop device; and funds to cover the cost of a meeting assistant. As the current budget of the Committee did not include appropriations for those items, the Committee decided to request that, pursuant to rule 22 of the rules of procedure, the Secretariat prepare a statement of programme budget implications related to the above-mentioned items. Similarly, the Committee decided to request States parties to the Convention to consider making earmarked contributions to the Committee.

XI. Cooperation with relevant bodies

A. Cooperation with United Nations organs and specialized agencies

17. At the opening meeting of the session, the Special Rapporteur on the rights of persons with disabilities and the Independent Expert on the enjoyment of human rights by persons with albinism made statements. Representatives of the following United Nations agencies, departments and programmes also made statements: the World Health Organization (in its capacity as Chair of the Inter-Agency Support Group on the Convention on the Rights of Persons with Disabilities), OHCHR, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the United Nations Office for Disaster Risk Reduction.

18. The Bureau of the Committee met with the President of the Standing Committee on Victim Assistance and Socio-Economic Reintegration of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction to discuss matters related to the coordination of activities.

B. Cooperation with non-governmental organizations and other bodies

19. The Committee was addressed by representatives of the Directorate of Human Dignity and Equality, Directorate General of Democracy, Council of Europe; the Global Alliance of National Human Rights Institutions; the International Disability Alliance; the International Disability and Development Consortium; the Christian Blind Mission; the Centre for the Human Rights of Users and Survivors of Psychiatry; Dementia Alliance International; the Association for the Prevention of Torture; and organizations of persons with disabilities from most of the countries considered by the Committee during the session.

20. Thematic side events were organized by Equal Rights Trust, the European Union Agency for Fundamental Rights, Inclusion International, the Mental Disability Advocacy Centre and Autistic Minority International.

XII. Consideration of reports submitted in accordance with article 35 of the Convention

21. The Committee considered the initial reports of Armenia (CRPD/C/ARM/1), Bosnia and Herzegovina (CRPD/C/BIH/1), Canada (CRPD/C/CAN/1), Cyprus (CRPD/C/CYP/1), Honduras (CRPD/C/HND/1), Iran (Islamic Republic of) (CRPD/C/IRN/1), Jordan

(CRPD/C/JOR/1) and the Republic of Moldova (CRPD/C/MDA/1). The Committee adopted concluding observations on those reports, which are available from the Committee's website.

22. The Committee adopted a list of issues in relation to the initial report of Panama (CRPD/C/PAN/Q/1).

23. The Committee initiated the second reporting cycle under the simplified reporting procedure and adopted lists of issues in relation to El Salvador (CRPD/C/SLV/QPR/2-3), Hungary (CRPD/C/HUN/QPR/2), Peru (CRPD/C/PER/QPR/2-3) and Spain (CRPD/C/ESP/QPR/2-3).

XIII. Conference of States Parties to the Convention

24. The Committee confirmed that it would be represented at the tenth session of the Conference of States Parties to the Convention by its Chair and one Vice-Chair.

Annex I

Decisions adopted by the Committee at its seventeenth session

1. The Committee adopted concluding observations in relation to the initial reports of the following countries: Armenia (CRPD/C/ARM/CO/1), Bosnia and Herzegovina (CRPD/C/BIH/CO/1), Canada (CRPD/C/CAN/CO/1), Cyprus (CRPD/C/CYP/CO/1), Honduras (CRPD/C/HND/CO/1), Iran (Islamic Republic of) (CRPD/C/IRN/CO/1), Jordan (CRPD/C/JOR/CO/1) and the Republic of Moldova (CRPD/C/MDA/CO/1).

2. The Committee adopted a list of issues in relation to the initial report of Panama (CRPD/C/PAN/Q/1).

3. The Committee adopted lists of issues under the simplified reporting procedure in relation to El Salvador (CRPD/C/SLV/QPR/2-3), Hungary (CRPD/C/HUN/QPR/2), Peru (CRPD/C/PER/QPR/2-3) and Spain (CRPD/C/ESP/QPR/2-3).

4. The Committee considered matters related to its communication and inquiry procedures pursuant to articles 6 and 7 of the Optional Protocol.

5. The Committee endorsed a draft general comment on the right to live independently and to be included in the community presented by its working group on a draft general comment on article 19. The Committee decided to disseminate the draft through the website of the Office of the United Nations High Commissioner for Human Rights and to call for submissions from all interested stakeholders. The deadline for submissions is 30 June 2017.

6. The Committee decided to hold a day of general discussion on article 5 of the Convention (non-discrimination) on Friday, 25 August 2017. It also adopted an outline of a general comment on that article and called for submissions from all interested stakeholders. The deadline for submissions is 30 June 2017.

7. The Committee adopted a statement on gender balance and equitable geographical distribution in the election of members of the Committee. It adopted a statement on the situation of persons with disabilities in floods and mudslides in Colombia, Ecuador and Peru. Both statements are available on the Committee's website. The Committee also adopted a joint statement with the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families on addressing disabilities in large-scale movements of refugees and migrants.

8. The Committee decided that any draft document relating to its activities under the Convention and its Optional Protocol requiring discussion and adoption by the Committee — including any document related to reporting (such as draft concluding observations, draft lists of issues and draft reports on follow-up to concluding observations), draft individual communications, draft general comments and draft guidelines, and working methods and other matters (such as draft annual reports, draft rules of procedure, draft notes by the Secretary-General on new communications and draft reports of the rapporteur on follow-up to Views) — should be translated into the Committee's working languages.

9. The Committee decided that its working languages during the biennium 2017-2018 would be English, Russian and Spanish.

10. With regard to countries to be considered at its eighteenth session and country rapporteurs, the Committee decided to consider the following countries: Montenegro (László Gábor Lovászy), Morocco (Danlami Umaru Basharu), Panama (Carlos Alberto Parra Dussan), Latvia (Jonas Ruskus), Luxembourg (Coomaravel Pyaneandee) and the United Kingdom of Great Britain and Northern Ireland (Stig Langvad). The Committee also adopted a list of issues in relation to Bulgaria and list of issues under its simplified reporting procedure in relation to Argentina, Australia, Ecuador and Tunisia.

11. The Committee decided that its eighteenth session would be held from 14 to 31 August 2017 and would be followed by the eighth meeting of the pre-sessional working

group, from 4 to 8 September 2017. During the latter, the Committee requested the pre-sessional working group to adopt lists of issues in relation to Nepal, Oman, the Russian Federation, Seychelles, Slovenia and the Sudan.

12. The Committee requested the Secretariat to prepare a statement of programme budget implications (see CRPD/C/17/2, para. 16).

13. The Committee adopted the report on its seventeenth session. It also adopted its fourth biennial report to the General Assembly and the Economic and Social Council covering the period 2015-2016.

Annex II

Summary of the decisions on communications submitted under the Optional Protocol

1. The Committee examined communication No. 14/2013, *D.R. v. Australia*. The author of the communication, D.R., had a mental and intellectual disability arising from an acquired brain injury. In July 1998, he was admitted to the Jacana Acquired Brain Injury Unit in the State of Queensland, Australia, to take part in a rehabilitation programme. In July 2000, the author was advised by the medical staff that his rehabilitation programme would cease and that he had been assessed as ready for discharge, but that accommodation and disability support services had to be available in the community beforehand. From July 2000 to August 2010, Jacana staff made various applications for social housing and support services on behalf of the author, to no avail. The author's name was placed on the Housing Register. Nonetheless, as disability support services could not be provided, his application for social housing was deferred. In September 2011, solicitors submitted a complaint of discrimination with the Australian Human Rights Commission on behalf of the author. The author's solicitors also submitted complaints to the Commission. In May 2014, the Commission decided to terminate consideration of the complaints of the author because there was no reasonable prospect of settlement. The author decided not to submit a complaint to the federal courts, considering that his claim would certainly fail. He further submitted that, since he was subject to an administration order, he had no power to initiate legal proceedings by himself. The author claimed that the State party's decisions and practice amounted to a violation of his rights under articles 14, 18-19, 22, 26 and 28, read alone and in conjunction with articles 4 and 5 (2), of the Convention. The Committee noted that when the Commission terminates consideration of a complaint complainants can bring legal proceedings before the federal courts, seeking an enforceable remedy for unlawful discrimination. It also noted that the author had not initiated any such proceeding and that the deadline for doing so had passed. As regards the author's submission that he had no independent power to commence legal proceedings, the Committee noted that the author was subject to a "certificate of authority", under which a public trustee is appointed as the administrator of a person's financial matters, but that it was not clear that the "order of reference" would prevent the author from initiating legal proceedings. The Committee noted that the author did not provide any further information on the issue. The Committee considered that it was therefore not in a position to determine whether the author could initiate legal proceedings by himself, but noted that in any event his representatives could do so and actually did so when presenting the author's case to the Commission. The Committee further recalled that, although it was not necessary to exhaust domestic remedies when the application of the remedies had been unreasonably prolonged or was unlikely to bring effective relief, merely doubting their effectiveness did not absolve the author from the obligation to exhaust those remedies. The Committee noted that, while the State party referred to a range of successful discrimination complaints made under the Disability Discrimination Act against actions of the Commonwealth and its States and territories, the author did not substantiate any of his arguments according to which the courts of the State party could not provide him with an effective and reasonably accessible remedy. Accordingly, the Committee considered that it was not in position to conclude that the author had fulfilled his obligation to exhaust domestic remedies and found his communication inadmissible under article 2 (d) of the Optional Protocol.

2. The Committee examined communication No. 27/2015, *L.M.L. v. United Kingdom of Great Britain and Northern Ireland*. The author of the communication is L.M.L., a British national suffering from a number of complex health issues following the loss of cerebrospinal fluid during a discectomy procedure in 2007. The author claimed to have suffered a violation by the State party of her rights under articles 5, 10, 12, 15, 17, 19, 23-27 and 30 of the Convention. She claimed that she was unable to obtain adequate medical care or a definite diagnosis in the State party and therefore had to seek treatment abroad. She requested the Committee to order the State party to take immediate action in granting

her the funds needed to access an international specialist neurosurgeon of her choice and to ensure that the funds needed to cover future treatment and rehabilitation costs were secured. The Committee considered that the allegations raised by the author related essentially to the evaluation of facts and evidence in relation to the medical examination carried out and the treatment provided to the author in the State party. The Committee observed that it was not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it could be ascertained that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice. The Committee considered that the author had failed to substantiate, for purposes of admissibility, that the conduct of State party authorities amounted to arbitrariness or a denial of justice and that the communication was therefore inadmissible under article 2 (e) of the Optional Protocol.

3. The Committee examined communication No. 31/2015, *D.L. v. Sweden*. The author of the communication, D.L., is a Swedish national diagnosed with autism. He claimed to be the victim of a violation of his rights by the State party under articles 5, 24 and 25, read in conjunction with articles 2-4, 9, 12 and 21, of the Convention. The author had been using a communication method known as "facilitated communication" in the school he was attending, as a tool of communication during school hours. In a decision of 19 December 2014, the Swedish Schools Inspectorate ordered the municipality in which the author was living to ensure that facilitated communication was not used in schools in the municipality. The municipality implemented the decision, which the author then appealed. The first instance court rejected the appeal. The author's subsequent request for leave to appeal to the Court of Appeal was rejected. The author claimed that the Inspectorate's decision to prohibit the use of facilitated communication and the implementation of that decision by the municipality reduced his opportunities to actively participate in teaching sessions. He further claimed that the prohibition lowered the standard of education he received and amounted to a violation of his right to education. The author further claimed that he had been denied the right to make a choice on an individual basis as to his method of communication and argued that the prohibition on the use of facilitated communication as a teaching method hindered the communication choices of people with disabilities, thereby resulting in disability-based discrimination. The State party requested the Committee to find the communication inadmissible for failure to exhaust domestic remedies as the author had not appealed the decision of the Court of Appeal to the Supreme Administrative Court. In its considerations, the Committee recalled that domestic remedies need not be exhausted if they objectively have no prospect of success, but that mere doubts as to the effectiveness of those remedies do not absolve the author from the obligation to exhaust them. The Committee found, based on the information on file, that it could not conclude that an appeal by the author to the Supreme Administrative Court would have had no objective prospect of success or that the proceedings would have been unduly prolonged. The Committee therefore concluded that the communication was inadmissible under article 2 (d) of the Optional Protocol.